

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:21-CV-364-D

MICHAEL W. OWENS,)
)
Plaintiff,)
)
v.) **ORDER**
)
MAKO MEDICAL LABS,)
)
Defendant.)

On September 10, 2021, Michael W. Owens (“Owens” or “plaintiff”), appearing pro se, filed a complaint in this court [D.E. 1]. On September 16, 2021, the court ordered plaintiff to correct filing deficiencies and directed plaintiff to pay the filing fee or submit a motion to proceed in forma pauperis [D.E. 2]. On October 5, 2021, plaintiff filed a motion to proceed in forma pauperis [D.E. 5]. Pursuant to 28 U.S.C. § 636(b)(1), the court referred the matter to Magistrate Judge Robert B. Jones, Jr., for a memorandum and recommendation on the plaintiff’s motion to proceed in forma pauperis and for a frivolity review [D.E. 9]. On October 20, 2021, Magistrate Judge Jones issued a Memorandum and Recommendation (“M&R”) and recommended that the complaint be dismissed as frivolous for failure to state a claim. See [D.E. 12]. On October 27, 2021, Magistrate Judge Jones ordered that because plaintiff is incarcerated, plaintiff shall pay the filing fee [D.E. 14]. See 28 U.S.C. § 1915(b). On November 8, 2021, plaintiff moved for return of money [D.E. 15] and filed a motion to vacate the judgment [D.E. 16].

“The Federal Magistrates Act requires a district court to make a de novo determination of those portions of the magistrate judge’s report or specified proposed findings or recommendations

to which objection is made.” Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (cleaned up); see 28 U.S.C. § 636(b). Absent a timely objection, “a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond, 416 F.3d at 315 (quotation omitted). If a party makes only general objections, de novo review is not required. See Wells v. Shriners Hosp., 109 F.3d 198, 200 (4th Cir. 1997). In “order to preserve for appeal an issue in a magistrate judge’s report, a party must object to the finding or recommendation on that issue with sufficient specificity so as reasonably to alert the district court of the true ground for the objection.” Martin v. Duffy, 858 F.3d 239, 245 (4th Cir. 2017) (quotation omitted); see United States v. Midgette, 478 F.3d 616, 622 (4th Cir. 2007).

Owens did not make any such sufficiently specific objections. Therefore, the court reviews for clear error. The court has reviewed the M&R and the record. There is no clear error on the face of the record. See Diamond, 416 F.3d at 315. Thus, the court adopts the conclusion in the M&R that the complaint is frivolous and fails to state a claim. Plaintiff’s motion to proceed in forma pauperis is granted and, because plaintiff is incarcerated, his motion for return of filing fee is denied. Because the court has not yet entered its judgment, plaintiff’s motion to vacate the judgment [D.E. 16] is dismissed as moot.

In sum, the court GRANTS plaintiff’s motion to proceed in forma pauperis [D.E. 5], DENIES plaintiff’s motion for return of money [D.E. 15], and DISMISSES AS MOOT plaintiff’s motion to vacate the judgment [D.E. 16]. The court ADOPTS the conclusions in the M&R [D.E. 12] and DISMISSES plaintiff’s complaint for failure to state a claim. The clerk shall close the case.

SO ORDERED. This 18 day of November, 2021.


JAMES C. DEVER III
United States District Judge